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10 Attorneys for Defendants Jack Henry & Associates,
 11 Inc., a Delaware Corporation dba Profitstars and
 12 First National Bank of Central Texas, a Texas
 13 Corporation

14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**
 16 **OAKLAND DIVISION**

17 **AMBER KRISTI MARSH and STACIE EVANS,**
 18 **individually and on behalf of a class of similarly**
 19 **situated persons,**

20 **Plaintiff(s),**

21 **vs.**

22 **ZAAZOOM SOLUTIONS, LLC, a Delaware**
 23 **Limited Liability Company, ZAZA PAY LLC, a**
 24 **Delaware Limited Liability Company dba**
 25 **DISCOUNT WEB MEMBER SITES, LLC,**
 26 **Unlimited Local Savings LLC, WEB DISCOUNT**
 27 **CLUB, WEB CREDIT REPT. CO.,**
 28 **MEGA ONLINE CLUB, LLC, and**
RAISE MONEY FOR ANYTHING;
MULTIECOM, LLC, a Colorado Limited Liability
Company dba ONLINE DISCOUNT
MEMBERSHIP, WEB DISCOUNT COMPANY,
and LIBERTY DISCOUNT CLUB; ONLINE
RESOURCE CENTER, LLC, a Delaware Limited
Liability Company dba Web Coupon Site, USAVE
COUPON, and UCLIP, MOE TASSOUDJI, an
individual, BILL CUEVAS, an individual, FIRST
BANK OF DELAWARE, a Delaware
Corporation; FIRST NATIONAL BANK OF
CENTRAL TEXAS, a Texas Corporation;
SUNFIRST BANK, a Utah Corporation; JACK
HENRY & ASSOCIATES, INC., a Delaware
Corporation dba PROFITSTARS; AUTOMATED

Case No. 4:11-cv-05226 YGR

DEFENDANT JACK HENRY &
ASSOCIATES, INC.'S NOTICE OF
MOTION AND MOTION TO DISMISS
THE THIRD AMENDED COMPLAINT

(FEDERAL RULES OF CIVIL
PROCEDURE 12(B)(6))

DATE: June 12, 2012

TIME: 2:00 p.m.

CTRM: One, 4th Floor

JUDGE: Hon. Yvonne Gonzalez Rogers

ELECTRONIC CHECKING, INC., a Nevada Corporation; DATA PROCESSING SYSTEMS, LLC, a Delaware Limited Liability Company and DOES 1-10, inclusive,

Defendant(s).

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on June 12, 2012, at 2:00 p.m., or as soon thereafter as this matter may be heard before the Honorable Yvonne Gonzalez Rogers in Courtroom One of the above-entitled Court located in the Ronald V. Dellums Federal Building, at 1301 Clay Street, Oakland, California 94612, Jack Henry & Associates, Inc. will and hereby does move to dismiss the Third Amended Complaint (the "Complaint") of Plaintiffs AMBER KRISTI MARSH and STACIE EVANS, individually and on behalf of a class of similarly situated persons ("Plaintiffs"), and each claim for relief asserted therein, alleged against Jack Henry & Associates, Inc. This Motion is made on the following grounds:

Jack Henry & Associates, Inc. will and hereby does move to dismiss the Complaint and each claim for relief asserted therein under Rule 12(b)(6) of the Federal Rules of Civil Procedure, on the grounds that:

1. Plaintiffs' Second Claim for Relief for Violation of the Wrongful Prong of California Business & Professions Code section 17200 against Jack Henry & Associates, Inc. must be dismissed on the grounds that the Third Amended Complaint fails to plead factual allegations sufficient to constitute a plausible claim against Jack Henry & Associates, Inc. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937 (2009).

2. Plaintiffs' Fourth Claim for Relief for Violation of the Fraudulent Prong of California Business & Professions Code section 17200 against Jack Henry & Associates, Inc. must be dismissed on the grounds that the Third Amended Complaint fails to plead factual allegations sufficient to constitute a plausible claim against Jack Henry & Associates, Inc. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937 (2009).

1 3. Plaintiffs' Sixth Claim for Relief for Violation of the Unfair Prong of California Business
2 & Professions Code section 17200 against Jack Henry & Associates, Inc. must be dismissed on the
3 grounds that the Third Amended Complaint fails to plead factual allegations sufficient to constitute a
4 plausible claim against Jack Henry & Associates, Inc. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937
5 (2009).

6 4. Plaintiffs' Seventh Claim for Relief for Conversion against Jack Henry & Associates, Inc.
7 must be dismissed on the grounds that the Third Amended Complaint fails to plead factual allegations
8 sufficient to constitute a plausible claim against Jack Henry & Associates, Inc. *Ashcroft v. Iqbal*, 556
9 U.S. 662, 129 S.Ct. 1937 (2009).

10 5. Plaintiffs' Ninth Claim for Relief for Negligence against Jack Henry & Associates, Inc.
11 must be dismissed on the grounds that the Third Amended Complaint fails to plead factual allegations
12 sufficient to constitute a plausible claim against Jack Henry & Associates, Inc. *Ashcroft v. Iqbal*, 556
13 U.S. 662, 129 S.Ct. 1937 (2009).

14 The Motion is based on this Notice of Motion and Motion of First National Bank of Central
15 Texas, the accompanying Motion to Dismiss the Complaint, the supporting Memorandum of Points and
16 Authorities, all pleadings and papers on file in this case, all matters of which this Court may take judicial
17 notice, and the arguments of counsel.

18 Respectfully submitted,

19 DATED: May 1st, 2012

GRAY • DUFFY, LLP

20 By: /s/ Lyn D. Tadlock

21 _____
22 RICHARD M. WILLIAMS
23 LYN D. TADLOCK
24 Attorneys for Defendant First National Bank of
25 Central Texas, a Texas Corporation
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